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The Effectiveness of non-Judge Mediators in Settlement of Divorce Cases in Elderly Cases at the Bantul Religious Court

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Abstract

The non-judge mediator refers to a party outside the court (not a judge) as a third party that has the rights to help the disputing parties in negotiating without any neutral case. This study aims to uncover the fact of the effectiveness level of the role of non-judge mediators in settling the divorce case in elderly cases in Religious Court Bantul. This is the qualitative field research, conducted at the Religious Court Bantul from February to March conducted analytically, and by taking data based on the findings in the field with a juridical-empirical approach based on the current law. i.e. PERMA Number 1 of 2016. The data were collected through observation, interviews, and documentation. The results of this study showed that *first*, the role of non-judge mediators in the implementation of mediation at the Religious Court Bantul has been in line with PERMA Number 1 of 2016, although it is not quite effective in settling the divorce cases. Based on data obtained in 2020, of 29 cases of elderly divorce, it was only 3 cases successfully settled by mediation. *Second*, the low rate of success in mediation in Religious Court Bantul was caused by several factors, including: very limited time, the constancy of the parties to get divorced, the prolonged problems faced by the parties, the absence of goodwill from the parties not attending the mediation process.

Keywords: *Effectiveness, Roles, Non-Judge Mediator*

Abstrak

Mediator bukan hakim merujuk kepada pihak di luar pengadilan (bukan hakim) sebagai pihak ketiga yang berhak membantu para pihak yang bersengketa dalam bernegosiasi tanpa adanya kasus yang netral. Penelitian ini bertujuan untuk mengungkap fakta tingkat efektifitas peran mediator non hakim dalam penyelesaian perkara perceraian pada perkara lanjut usia di Pengadilan Agama Bantul. Penelitian ini merupakan penelitian lapangan kualitatif, dilakukan di Pengadilan Agama Bantul pada bulan Februari sampai dengan Maret yang dilakukan secara analitis, dan dengan mengambil data berdasarkan temuan di lapangan dengan pendekatan yuridis-empiris berdasarkan hukum yang berlaku, yaitu PERMA Nomor 1 Tahun 2016. Pengumpulan data dilakukan melalui observasi, wawancara, dan dokumentasi. Hasil penelitian ini menunjukkan bahwa pertama, peran mediator non hakim dalam pelaksanaan mediasi di Pengadilan Agama Bantul sudah sejalan dengan PERMA Nomor 1 Tahun 2016, meskipun belum cukup efektif dalam penyelesaian perkara perceraian. Berdasarkan data yang diperoleh pada tahun 2020, dari 29 kasus perceraian lansia, hanya 3 kasus yang berhasil diselesaikan melalui mediasi. Kedua, rendahnya tingkat keberhasilan mediasi di Pengadilan Agama Bantul disebabkan oleh beberapa faktor antara lain: waktu yang sangat terbatas, keteguhan para pihak untuk bercerai, persoalan berkepanjangan yang dihadapi para pihak, tidak adanya itikad baik dari para pihak tidak menghadiri proses mediasi.

Kata kunci: *Efektifitas, Peran, Mediator Non Hakim.*

INTRODUCTION

The judicial procedure has the principle of peace before deciding a case. Religious court judges will not decide a case before the litigants have resolved it in an agreement, so that it will be carried out through mediation assisted by a judge mediator or non-judge mediator to obtain a solution without the case being decided. The Supreme Court issued regulations for mediation in courts aimed at resolving cases in a win-win solution manner, as well as minimizing the accumulation of cases (Sunarsi, 2018). In Article 1851 of the Civil Code: "*Peace is an agreement by which both parties, by handing over, promising or withholding an item, end a case that is hanging or prevent a case from arising. This agreement is not valid, unless made in writing*".

As implied in PERMA Number 1 of 2016 concerning mediation steps which reads "mediation is a way of resolving disputes through a negotiation process to obtain an agreement between the parties assisted by a mediator" (PERMA). If the mediation does not result in peace between the two parties, then the case is will be decided by a judicial judge. In 2008 law enforcement in Indonesia just started carrying out mediation procedures.

Divorce can still be found at the age of fifty and over at the Bantul Religious Court. A marriage that has stepped on for decades cannot be expected to be harmonious forever, if the

two of them cannot resolve the problem, it will end up asking for help from a religious court judge to decide on a divorce. At that age, they should be more mature in dealing with a problem and thinking about a better old age, but the opposite happened.

Marriage bonds generally go through a process of marriage adaptation and there is mutual trust between the two (Itriyah, 2009). The adjustment process takes a long time, if in that case negative thoughts arise between the partners, then there is no harmony in the marriage. Divorce has very broad negative impacts, as it affects both parties in the mortgage rights as husband and wife and the psychology of their children, even their extended family is affected.

There are several studies related to divorce mediation. Among them, namely in his research, Yogi Wahyudi, the Kotabumi Religious Court, had the causes of failure in the mediation process, namely, first, mediation seemed rushed, both places for holding mediation were still not conducive, because the place was in front of a busy courthouse, so that it could interfere with concentration, the three mediators those mediating were judges who were not yet certified (Wahyudi, 2020). The results of research from Achmad Mubarak at the Salatiga Religious Court dominated failure in mediation because there were several causes, first only 1 (one) judge had a certificate out of 7 (seven) judges, second Mediation was only carried out once in a short time, third mediation was carried out free of charge , it is as if mediation is carried out only as a formality to comply with statutory regulations (Mubarak, 2018). Tommy Aswinanda Adhamhaq conducting research related to the implementation of mediation at the Kudus Religious Court, by trying to reconcile the parties by implementing mediation procedures based on PERMA No. 1 of 2016, although it is not yet ideal, obstacles to mediation are caused by several factors including: the parties are in an emotional state, the presence of WIL (another ideal woman) or vice versa, the situation of the parties is asymmetric, the parties are less active when mediated, the number of mediator judges who very limited (Adhamhaq, 2018).

The author wishes to dive into this research, because when the author carried out an internship at the Bantul Religious Court, he saw with naked eye several parties in divorce cases aged fifty years and over carrying out mediation and divorce proceedings. So the writer wants to know what is the role of non-judge mediators in resolving the case and what are the causes of the divorce and the factors if mediation fails to reach an agreement. In essence, married couples who have stepped on decades of professionalism in their family when dealing with the sparks that befell them and become a model for young couples, but the opposite happens. With

the mediation process, it is hoped that it will be able to resolve the problem for the parties to the divorce case peacefully without any hostility and maintain good relations.

RESEARCH METHOD

This research is a type of field research (field research) with an empirical approach. Because they want to know the causes of divorce in the elderly and the low success rate of mediation in elderly divorce cases. The research location was carried out at the Bantul Class 1 B Religious Court which coincided with Jalan Urip Sumoharjo 8, Bantul Regency, Special Province of Yogyakarta. The legal materials used are primary data sources and reinforced by secondary data. The primary data source used is PERMA Number 1 of 2016 and the secondary data sources used are interviews with non-judge mediators, books, theses, legal journals related to mediation. This research requires analysis of inductive and deductive thinking data which tend to be objects that do not come from numbers directly. After obtaining accurate data, a conclusion is drawn by means of a juridical analysis based on the regulations concerned with the problem under consideration.

RESULT AND DISCUSSION

The Effectiveness of non-Judge Mediators in Settlement of Divorce Cases in Elderly Cases.

In English the word effective comes from effective which means successful (Tika, 2014, p. 129), something that is done with all the effort works well. The word effectiveness is a link between vision and mission. The increased participation of the vision towards the achievement of the mission, the more successful the institution and institutions will be. The success of an institution's target achievement is through effectiveness, so a director can be judged by his effectiveness in doing the right job. Effectiveness is described to find out how extensive an institution implements its missions. Institutional effectiveness is about *doing everything you know to do and doing it well* (Silalahi, 2015, pp. 416-417).

According to Soejono Soekanto, the meaning of effectiveness is a level to which an organization can achieve its goals. Law can be called effective, if it has a positive legal impact, at that time the law reaches its target in fostering or changing human character into legal behavior. (Soekanto, 1988, p. 80)

In the mediation process there is an achievement of peace, if the mediation is successful then the mediator makes a statement agreeing to peace in writing and the signature of the mediator handling the case, then reports to the panel of judges. If there is no amicable agreement, the

mediator will provide a statement in writing that the mediation was unsuccessful to the judge examining the case to decide on the case.

Table 1. Recapitulation of Court Mediation Report Results Bantul Religion 2020

No.	Month	Case Which is mediated	Mediation was successful	Mediation was not successful
1	January	4	1	3
2	February	2	0	2
3	March	2	0	2
4	April	3	1	2
5	May	2	0	2
6	June	2	0	2
7	July	3	1	2
8	August	2	0	2
9	September	2	0	2
10	October	2	0	2
11	November	3	1	2
12	December	2	0	2
Amount		29	3	26

To find out the level of effectiveness of mediators in solving divorce cases in elderly cases, we can see based on the theory of legal effectiveness put forward by Soerjono Soekanto, the effectiveness of a law can be ensured by 5 (five) factors (Soekanto, 1976), among the following:

1. The legal factor it self (law).

This legal factor includes various formal arrangements, rules that apply in society and various products that arise as a result of applying the law. The legal substance in this case is PERMA No.1 of 2016. The juridical basis of PERMA No.1 of 2016 concerning Mediation Procedures in Courts is a statutory regulation, so that its existence is recognized and has binding legal force. The Supreme Court Regulations are a complement to higher statutory regulations, namely the Law on the Supreme Court, from PERMA No. 1 of 2016 emphasizes the good

faith of the parties, with this good faith it is hoped that the mediation process will run effectively and efficiently.

2. Law enforcement factors

This factor relates to a form that includes several institutional elements, enforcement, services, law management in general, such as legislatures, judiciary, police, prosecutors, and state administration that manage the formation or provision of legal services and so on, namely the parties the party that forms or applies the law, in this case the mediator judge and the existing legal services. In 2016 Article 13 paragraph (1) PERMA Number 1 explained, that every mediator must have a mediator certificate which is obtained after participating and being declared to have passed the mediator certification training held by the Supreme Court or an institution that has obtained accreditation from the Supreme Court. All non-judge mediators at the Bantul Religious Court have certificates issued by the supreme court, so that they can carry out their roles with various experiences gained after training, then mediation can be carried out optimally and include the latest educational background on the list of mediators. The Bantul Religious Court has prioritized non-judge mediators in mediating, so that judges can work with a focus without concurrent duties.

3. Factors of facilities or facilities that support law enforcement

Without certain means or facilities, it is impossible for law enforcement to take place smoothly. These facilities or facilities include, among other things, educated and skilled human resources, good organization, adequate equipment, sufficient finance to support the achievement of the effectiveness of the law itself. The Bantul Religious Court has provided a mediation room with sufficient facilities to provide comfort for the parties and the mediator during the mediation, including: (one) mediation room with facilities, 1 (one) large oval table, 5 (five) swivel chairs, 4 (four) stacking chairs, AC (alternating current) or air conditioning, family caricatures *sākinah māwaddah wa rahmah*, 1 (one) computer and printer unit, as well as provision of aqua glass, waiting room, list of mediators displayed on the wall, clean, and maintenance of the facilities is still carried out routinely.

4. Community factors

namely where a law applies in the environment. Society is strongly influenced by the three previous factors in legal compliance, namely legal factors, law enforcement factors, and facilities or facilities. The majority of people are indifferent to the rule of law that is applied, because they only want to obtain a legal certainty of justice and the case at hand. Even though in terms of the mediation process, both parties to the dispute will have a desire for

the mediator to be able to resolve the disputes of the parties with good results. So the role of the mediator is very important in the course of the mediation process between the two parties. The author includes compliance with community mediation at the Bantul Religious Court, among others:

- a. The parties still want a divorce.
- b. The parties to the case do not have good faith, in the absence of mediation.
- c. The parties both have high egoism.
- d. The parties did not fully describe the problem in detail.

5. Cultural factors that is as a result

Namely as a result of work, creativity, and taste based on human will in social life. The cultural factors that actually unite with the societal factors are deliberately distinguished, because in the discussion it raises the issue of the value system which is the core of spiritual or material culture. As a system (or subsystem of a social system), law includes structure, substance and culture. In the case of mediation in religious courts, we know that the seekers of justice are Muslims, these Islamic values are used as a basis.

The elements in the legal system above do not fully comply with the legal system concept described, so it is difficult to achieve successful mediation. The ineffectiveness of this mediation is clearly seen from the mediation results report at the Bantul Religious Court from January to December 2020, there were 29 cases of divorce of elderly people who had been mediated, only 3 cases were successfully mediated. so that there were 26 cases of unsuccessful mediation. From the overall results of the mediation, it can be said that the mediation at the Bantul Religious Court was less effective.

The Reason for The Low Success Rate of non-Judge Mediators in Carrying Out Mediation in Elderly Divorce Cases at The Bantul Religious Court

Before discussing thoroughly the causes of the low success rate in carrying out mediation in elderly divorce cases at the Bantul Religious Court, it would be nice to discuss the roles played by the Bantul Religious Court mediator first as follows:

a. The Role of the Bantul Mediator

The role of the mediator in resolving old divorce issues at the Bantul Religious Court:

- 1) Build confidence between the parties;
- 2) Deeply dive into the problems of the parties with a sense of empathy;
- 3) Explaining the procedure and urging the parties in correlation and reinforcing a calm situation, inserting a few jokes and laughter so as not to get tense;

- 4) Helping the parties in dealing with the reality that is happening and reminding them of their old age after a divorce.
- 5) Guiding the parties in negotiating, such as if the wife has menopause the mediator will suggest polygamy with the wife's choice, so that it is fair;
- 6) Assist parties to gather important news and create solutions to help solve problems;
- 7) The mediator does not force the parties to determine the agreement, only follows the wishes of the desired parties.;
- 8) The mediator calls the party who did not come during the mediation.

The mediator will summon the defendant/respondent who has not attended mediation for 2 (two) consecutive summons, if unable to attend must have concrete reasons, such as state duties or work that cannot be left behind, living abroad, illness Include a sick note from a doctor. If he is not present without any explanation and without being represented by legal counsel, then the party does not have good faith. In the trial the defendant or the respondent is given a sanction to pay for mediation. The summons costs come from down payment from the plaintiff or applicant. In carrying out mediation it is permissible to be represented by attorneys, if the party is unable to attend for certain reasons. The absence of the defendant/respondent in the mediation process means that the mediation is not successful and the case is valid for termination, because the party does not comply with the law. The mediation procedure at the Bantul Religious Court has adjusted PERMA Number 1 of 2016 (Bakir, 2021)

The principle of the mediator carrying out mediation in the Religious Courts, unless there is an agreement from the litigants wanting to carry it out outside the court, is permissible for non-judge mediators, but all costs will be borne by the litigants. This is only done with middle and upper class parties because these costs include transportation fees, mediator meal fees, etc. are borne by the parties. Basically, mediation costs at the Bantul Religious Court are cheaper, around Rp. 125,000.00 per case.

"...According to the non-judge mediator Ubaidillah, the certificate is not very important, the most important thing is that his knowledge in the sociological approach must be fulfilled, because he must sympathize with the parties being mediated, he must be able to dismantle the problem and provide a win-win solution, it must be in-depth...".From the results of these interviews it can be understood, that the priority of the mediator is to be able to approach the parties with a sense of sympathy so that all problems are revealed, so that they can provide solutions to solve the problems experienced.

In the past 8 (eight) years, the Bantul Religious Court judge has concurrently served as a mediator. However, now the judge who has mediated is prohibited from deciding the case before the court, so he must conduct a trial with a different judge. Currently, the Bantul Religious Court prioritizes non-judge mediators to mediate in order to be more effective in resolving cases (Bakir, mediasi, 2021). However, in its application, mediation at the Bantul Religious Court is still relatively low.

Causes of Low Implementation of Mediation in Elderly Divorce Cases in the Bantul Religious Court:

1) Mediation Time

In PERMA Number 1 of 2016 it has been stated that the mediation period is carried out for 30 (thirty days) and can be extended 30 working days after the initial mediation time. So the Mediator only holds one meeting except for matters of inheritance and joint assets. Mediation must be carried out with both parties, if it is scheduled to be absent, the mediation is postponed. Ends with a buildup of cases. But contrary to court regulations that must be completed quickly. So it produces mediation that is less effective.

"...According to non-judge mediator Bakir, mediation is being pursued by the court, sometimes mediation is postponed. A month must be completed. It's useless to hold mediation, it's just a formality. If a party is dizzy and can't think, then it is demanded that it be resolved quickly. There were those who mediated twice, until I ordered istikharah. Because 2 (two) weeks must be reported to the judge who must be uploaded. The lack of mediation is being chased, there is indeed a right to summons. Who called and typed the bailiff, only the mediator's signature. The summons uses the plaintiff's down payment and is calculated when the decision is made. The parties cannot be separated from mediation. Once they don't come they call them a second time, if they don't come again they can be cut off by verstek. If you don't accept, you can submit an objection. Those who were summoned with the intention of not attending did not come, there were those who denied it, there were those who were cut off, please...

2) Prolonged dispute.

The average mediation that is not successful, because they have had problems for a long time that are not quickly resolved, end in heartache that is so deep that they have the strength to divorce. So there is no agreement between the parties, the conclusion of mediation is failure, there is no agreement.

“...According to the non-judge mediator Bakir, those who were able to reconcile were in less than 6 (six) months, if it had been years it would be difficult to reconcile. Because it has entered a heart that is already severe. The court helps people to solve problems not for divorce...”

- 3) The parties have the intention to remain divorced because there is no communication

The parties did not want to make peace and had a strong desire to divorce because they had high egos and there had been no communication between the two of them for a long time, so the dispute dragged on, leading to submitting the case to the Religious Courts. This makes it difficult for the mediator to solve the problem.

- 4) The parties do not have good faith.

If one of the parties does not attend the mediation process on the specified day, it is a sign of a lack of good faith with the law, so mediation can be postponed. This causes a buildup of unfinished business. So the mediator must summon the party who is absent for 2 (two) consecutive times. If you are not present after the successive summons, it is stated that the mediation is not successful and the case is valid for termination, because the party does not comply with the law.

- 5) The parties insist on a divorce because of the second marriage

This happened because the first and second wives had different characters and had their own opinions in the household. Thus giving rise to a different love.

CONCLUSION

Mediation at the Bantul Religious Court is less effective, because in theory Soerjono Soekanto mentions 5 factors namely: (a) the legal factor itself, mediation at the Bantul Religious Court has carried out mediation procedures in accordance with PERMA rules No. 1 of 2016. (b) enforcement factors legal, the Bantul Religious Court Mediator has carried out his roles properly and as a whole has had a certificate issued by the Supreme Court, (c) the facility or facility factor, the Bantul Religious Court has provided a mediation room with sufficient facilities, so as to provide comfort to the participants. parties and mediators during the mediation process. (d) community compliance factors, lack of compliance of the parties, such as lack of good faith, the parties have mutual high egoism but are still divorced, so mediation cannot be carried out effectively (e) cultural factors, there are 31 divorce mediations in elderly cases, only 4 cases were successful, and 27 cases were unsuccessful.

Factors causing the low success rate of mediation are: (1) mediation time which is accelerated by a Supreme Court Regulation within 30 (thirty) days, so that only one meeting is held. Then the parties cannot think more brilliantly, as if as a formality (2) the parties have protracted problems so that the deepest hurt is difficult to reconcile, (3) the parties have a strong desire to divorce because mutual high egoism, making it difficult for the mediator to solve the problem, (4) there are parties who do not have good faith due to the absence of the parties so that the mediation is postponed or if they are not present for 2 (two) summons, the verstek is terminated.

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